IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

C.W.P. No.17382 of 2005
Date of Decision: Aug.7, 2007

M.P.Goswami ..... Petitioner

Versus

State of Punjab and others ..... Respondents

Coram: Hon'ble Mr. Justice Ashutosh Mohunta
Hon'ble Mr. Justice T.P.S. Mann

Present: Mr. Sudershan Goel, Advocate
for the petitioner.

Mr. A.S.Grewal, Addl. A.G. Punjab.

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ASHUTOSH MOHUNTA, J.

The petitioner has prayed for quashing the charge-sheet dated 11.2.2004 (Annexure P-6) and the order dated 28.7.2004 (Annexure P-11) by which an Inquiry Officer was appointed, being violative of Rule 2.2 (b) (2) (ii) of the Punjab Civil Service Rules, Vol.II (for short 'the Rules).

The petitioner was retired from service as Deputy Excise and Taxation Commissioner, Punjab with effect from 31.3.2003. (PARA 8 OF WP) vide Notification dated 25.3.2003, a copy whereof has been produced on record as Annexure P-3 with the writ petition. The relevant portion of this Notification reads as under :

> *"The Governor of Punjab is pleased to order that Shri M. P. Goswami, Dy Excise and Taxation Commissioner, Patiala, shall retire from Government service on attaining the age of superannuation with effect from the afternoon of 31.3.2003 without prejudice to departmental enquiry, if any, pending against him which will be finalized on merits."*

After the petitioner retired from service, the respondent issued a communication dated 9.6.2003, a copy whereof is on record as Annexure P-4, certifying that "no departmental/vigilance enquiry or judicial proceedings is pending against him.

After nearly one year of his retirement, the Government of Punjab in the Department of Excise and Taxation, issued a charge sheet dated 11.2.2004 (Annexure P-6) proposing to take action against the petitioner under Rule 8 read with Rule 2.2 (b) of the Rules containing allegations relating to a period of three years from 19.11.1992 to 3.7.1995. The petitioner submitted his reply dated 20.2.2004 (Annexure P-7) wherein it was, inter-alia, averred by the petitioner that his explanation was sought by the Government on the same very issues as were involved in the charge sheet way back in the year 1998 which were duly replied by him vide letter dated 9.11.1998 and therefore the explanation called vide letter dated 6.8.1998 be dropped.

The petitioner has stated that actual reasons for serving him a charge sheet at this stage, containing stale allegations relating to a period of more than 8 to 11 years prior to his retirement, are malicious and vindictive. There are two instances cited by the petitioner (PARA 19 OF WP, AT PAGES 12 AND 13) which annoyed the authorities and prompted them to issue the impugned charge sheet. The first instance is that the petitioner had appeared as a counsel after his retirement in CWP No. 13020 of 2003 filed in this Court, challenging appointment of the son of the then Excise and Taxation Minister Punjab, as an Inspector in Punjab Police on compassionate ground. The second instance mentioned by the petitioner is his appearance as a counsel in a public interest litigation – CWP 2527 of 2004 challenging appointment of DSPs from Sports quota which appointments were quashed by this Court.

Mr Sudershan Goel, learned counsel for the petitioner, submitted that in view of the aforesaid statutory provision, there is a complete embargo on the power of the State to issue a charge sheet against a retired employee for an event which has taken place more than four years prior to his retirement. It was further submitted by the learned counsel that since in the present case the petitioner retired from service on 31.3.2003 and the allegations in the impugned charge sheet admittedly relate to the period from 19.11.1992 to 3.7.1995, the impugned charge sheet was bad in law and could not be issued by the authorities except for extraneous considerations.

Rule 2.2. (b) of the Rules, which has been invoked by the Government to charge sheet the petitioner, itself prohibits institution of an enquiry against a retired officer for an event which had taken more than four years before such institution. This prohibition is contained in sub-clause (ii) of the Rule which reads as under:

> *"2.2 (b). Such departmental proceedings, if not instituted while the officer was in service whether before his retirement or during his re-employment –*
> *(i) shall not be instituted save with the sanction of the Government*
> *(ii) shall not be in respect of any event which took place more than four years before such institution".*

The learned State Counsel submitted that action of the authorities was justified because action against the petitioner was initiated vide Memo dated 6.10.1998 (Annexure P-2/A) and the reply dated 9.11.1998 (Annexure P-2) submitted by the petitioner was pending consideration. The learned counsel further submitted that

since the matter was pending, a decision to conduct an enquiry against the petitioner could be taken at any stage without in any way attracting the embargo of sub-clause (ii) of Rule 2.2(b).

The learned counsel for the petitioner has submitted that a 'departmental enquiry' is altogether different from a 'contemplated enquiry'. If a decision on 'contemplated enquiry' is kept pending by the Government to wait for retirement of the employee, the statutory "enquiry" would be barred if it pertains to a period of more than four years prior to such institution of enquiry. Reliance has been placed upon a Constitution Bench judgement of the Supreme Court in ***P.R.Nayak v. Union of India***, 1972 (1) Supreme Court Cases 332. The learned counsel further placed reliance upon (a) ***Narender Dev Sharma v. State of Punjab*** 1996 (1) Service Cases Today 623 (DB); (b) ***Puran Chand v. State of Punjab*** 2000 (2) Recent Service Judgements 85 (DB), (c) ***L.B.Gupta v. PSEB*** 2001 (4) RSJ 127 (DB), (d) ***R.C.Gupta v. PSEB*** 2002 (1) RSJ 509 (DB) and (e) ***Gurdev Singh v. State*** 2004 (2) RSJ 325 (DB).

We have heard the counsel for the parties at length. The following two questions arise for consideration:-

(a) Whether initiation of 'disciplinary proceedings' commences from the issuance of charge sheet or from the letter calling for explanation of an employee?

(b) Whether issuance of a charge sheet for an allegation pertaining to more than four years old prior to the date of charge sheet is barred under Rule 2.2(b) (ii)?

The question at (a) above stands answered by a Constitution Bench judgement of the Supreme Court in ***P.R.Narayanan v. Union of India*** (1972) 1 SCC 332. Relying upon this judgement, a Division Bench of this Court, in ***Narender Dev Sharma v. State of Punjab***, 1996 (1) SCT 623 held in para 6 as under:

> *"The phrase 'initiation of departmental enquiry' has not been defined in Rule 2.2 but it has been judicially interpreted. A departmental enquiry cannot be treated to have been initiated till the competent authority frames a charge-sheet and issues the same to the concerned employee. A contemplated enquiry whatever the stage of contemplation cannot be equated with an enquiry initiated by the issue of charge-sheet. While interpreting the provisions of All India Civil Services (Discipline and Appeal) Rules, 1969, their Lordships of the Supreme Court in* ***P.R.Narayanan v. Union of India****, 1972 SLR 219, held that an enquiry cannot be said to have been initiated against a member of All India Service till the charge-sheet/ statement of allegations has been issued to him."*

In ***Puran Chand v. State of Punjab***, 2000 (2) RSJ 85, a Division Bench of this Court interpreted Rule 2.2(b) of the Rules and held as under :-

> *"Pointed attention of this Court has been drawn to Clause (ii) of the aforesaid Rule 2.2(b). A careful perusal of the same would show that in case a departmental proceeding is to be initiated against an*

employee after his retirement, it cannot be in respect of an event, which took place more than four years from the date when the proceeding is initiated".

Again, in ***L.B.Gupta v. PSEB***, 2001 (4) RSJ 127, a Division Bench of this Court quashed the charge sheet dated 21.9.1999 served upon the delinquent on the charges related to events happened during 1985 to 1990. Yet again in ***R.C.Gupta v. P.S.E.B***., 2002 (1) RSJ 509, a Division Bench of this Court, held on the basis of bar created vide Rule 2.2 (b) (ii) that, "admittedly, the petitioner has been charge sheeted for the events of 1984 vide charge sheet dated 26.3.1999. Therefore, such charge sheet cannot be sustained in the eyes of law."

After noticing Rule 2.2(b) of the Rules, a Division Bench judgement of this Court, in ***Gurdev Singh v. State of Punjab***, 2004 (2) RSJ 127, quashed the charge sheet as also the order vide which an enquiry officer was appointed.

Thus, in view of the above discussions, we hold that a 'contemplated enquiry' is not the same as "initiation of disciplinary proceedings". The 'disciplinary proceeding' commences with the issuance of charge sheet and not from the date explanation of an employee is sought. We further hold that rule 2.2(b) (ii) places a complete embargo on holding an enquiry against a retired employee for any event happened prior to four years of intended enquiry. In other words, in case a departmental proceeding is to be initiated against an employee after his retirement, it cannot be in respect of an event, which took place more than four years from the date when the proceeding is initiated. This appears to be the apparent object of the

Rule also because otherwise the authorities can be allowed to sleep for years and then rake up decades old matters against retired employees. The sword of "enquiry" cannot be allowed to be hanged on the heads of a retired employee for ever and he should be allowed to live a peaceful life if the allegations are more than four years old preceding the 'institution of enquiry.'

In view of the above discussion, the writ petition is allowed. The impugned charge sheet dated 11.2.2004 (Annexure P-6) is quashed. Consequently, the order dated 28.7.2004 (Annexure P-11) appointing Shri M.M.Oberoi, IAS (Retd) as enquiry officer is also quashed being violative of Rule 2.2(b)(2)(ii) of the Rules. There should be no order as to costs.

(ASHUTOSH MOHUNTA)
JUDGE

7.8.2007

(T.P.S. MANN)
JUDGE